IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

Writ Petition No. 1740 (S/B) of 2002

1. Chandra Shekhar Joshi S/o Shri Murlidhar Joshi
   R/o Village & Post Bhantola
   District- Almora
2. Chandra Shekhar Joshi S/o Shri Murlidhar Joshi
   R/o Village & Post Bhantola
   District- Almora ------ Petitioners

Versus

1. State of Uttaranchal through its Principal Secretary, Forest Department Government of Uttaranchal Pradesh Dehradun.
2. Chief Conservator of Forest Kumaun At Nainital
3. Divisional Forest Officer Forest Division Nainital
4. Divisional Forest Officer Soil Conservation Forest Division Nainital ------- Respondents

Hon'ble M.M. Ghildiyal, J.

Heard Sri Gopal Narain, learned counsel for the petitioners and learned Standing Counsel for the respondents.

By means of this writ petition, the petitioners have prayed for the following reliefs:

1. a writ, order or direction in the nature of mandamus to direct the respondents to pay the minimum of the pay scale of class 3rd employees to the petitioners as the direction issued by the Hon'ble Supreme Court.
2. writ, order or direction, which this Hon'ble Court may deem fit and proper in the circumstances of the case.
3. award the cost of the writ petition.
4. Issue a writ, order or direction in the nature of mandamus directing the respondents to regularize the services of the petitioners on the post of Draftsman in view of the Regularization Rules, 1998.

The stand of the petitioners is that the petitioner no. 1 was appointed on the post of Draftsman in the office of Divisional forest Officer, Forest Division, Nainital on daily wages basis on 15.11.1988 and since then he was continuously working. Similarly petitioner no. 2 was also appointed on the same post. Since the petitioners were not being paid similar pay scale as it has been paid to the other employees, they preferred Writ Petition No. 34729 of 1996 before the Allahabad High Court. The said writ petition was disposed of on 10.12.1997.

Against the order dated 10.12.1997, State of U.P. went in appeal being Appeal No. 3634 of 1998, State of U.P. & Ors. Vs. Putti Lal before the Hon'ble Supreme Court.

The Apex Court in its judgment issued direction that a daily wager would be entitled to minimum of pay scale as is available to their counter part. The petitioner approached the respondents for compliance of the direction issued by the Hon'ble Apex Court and the respondent no. 2 on 10/11th October, 2002 passed order for payment of minimum pay scale at the rate of Rs. 2,550/- per month, which is the scale of Class IV employee while the petitioners were working on the post of Draftsman, which is a Class III post. Consequently, the petitioners preferred the present writ petition.

Learned Single Judge referred the matter for consideration before the Full Bench on 10.12.2003 on two points. First, whether in view of the judgment in the case of State of U.P.& Ors. Vs. Putti Lal, 1998 (1) UPLBEC 313, daily wagers are entitled for minimum pay scale and second, whether the daily wagers as held by the Apex Court in the case of State of Haryana & Anr. Vs. Tilak Raj & Ors., 2003 AIR SCW 3382 are entitled for minimum wages

admissible to such workmen as prescribed and not the minimum pay in the pay scale applicable to similar employees in regular service?

The Full Bench on 12.05.2005 has held that the case of respondent is that the judgment has been implemented in the case of the petitioners and, thus, first point mentioned in the reference order does not arise for consideration and decision. The second point also does not arise for consideration and decision in this case because the rights of the parties have already been finally settled and crystallized as per the judgment of the Supreme Court in the case of State of U.P. & Ors. Vs. Putti Lal. The full Bench has further held that the only dispute in the writ petition is that whether the petitioners were engaged as Draftsman, which is said to be a Class III post.

According to the petitioners, though they were engaged as a Draftsman, they are being paid only a minimum pay scale of Class IV employees. On the contrary, the stand of the respondents is that the first petitioner was engaged as a clerk and he is being paid the salary applicable to the clerks and the second petitioner was engaged as Class IV employee and, therefore, he is being paid the minimum pay scale applicable to Class IV employees.

The petitioners, in support of their claims that they were engaged as Draftsman, had produced certified copies of some certificates issue by some Forest Officer, and consequently, the Full Bench has held that it is open to the petitioners to produce the originals of the above mentioned certificates and the learned Single Judge himself may decide the writ petition after verification of genuineness of those certificates and, thus, sent back writ petition to be decided by the learned Single Judge.

The petitioners have in their possession some certificates issued by some Forest Officers that they were appointed as Draftsman. The stand of the respondent is contrary to this.

The petitioner may submit these documents before the competent authority, that is, Chief Conservative of Forest, Kumaun Region, who will take decision whether the certificates issued by Forest Officers are genuine or not and whether the petitioner no. 2 was appointed as Draftsman or not, within a period of three months from the date of production of a certified copy of this order. So far petitioner no. 1 is concerned, the name of the petitioner has already been deleted from array of parties. The respondent has to take decision in respect of petitioner no. 2 only.

With the above direction, the writ petition is finally disposed of.

(M.M. Ghildiyal, J.)

19.04.2007
VKS